

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TQ DELTA, LLC,

Plaintiff,

v.

2WIRE, INC.,

Defendant.

C.A. No. 13-cv-1835-RGA

STIPULATION REGARDING FAMILY 5 PATENTS

WHEREAS, in Counts XV through XVIII of the Third Amended Complaint, Plaintiff TQ Delta, LLC (“TQ Delta”) has alleged Defendant 2Wire, Inc. (“2Wire”) infringes U.S. Patent Nos. 7,451,379; 8,516,337; 7,979,778; and 7,925,958 (collectively, the “Family 5 patents”), *see* D.I. 380, at ¶¶ 120–143;

WHEREAS, 2Wire has counterclaimed for declaratory judgment of invalidity and noninfringement of the Family 5 patents, *see* D.I. 505, at ¶¶ 21–26;

WHEREAS, the Court has issued two orders relating to claim construction for the Family 5 patents: (1) August 24, 2018 Memorandum Opinion providing claim constructions for multiple terms in the Family 5 patents, D.I. 550; and (2) October 9, 2018 Order denying TQ Delta’s motion for reconsideration of the claim construction rulings relating to Family 5, D.I. 574; and

WHEREAS, the Court’s Memorandum Opinion providing claim construction for the Family 5 patents found that the preamble of independent claim 11 of the ’379 patent is not a limitation for claim 11 but is a limitation for dependent claim 16, the parties stipulate that each limitation of claim 11 of the ’379 patent is found in the prior art, and therefore, based on the Court’s ruling that the preamble is not limiting, claim 11 of the ’379 patent is invalid under 35 U.S.C. §§ 102 and/or 103; and

WHEREAS, the Court's Memorandum Opinion providing claim construction for the Family 5 patents further found that the term "normalization module" used in the preamble of claim 11 of the '379 patent is limiting on dependent claim 16 of the '379 patent and is indefinite under 35 U.S.C. § 112, ¶ 6; and

WHEREAS, the Court's Memorandum Opinion providing claim construction for the Family 5 patents further found that the term "declare a Severely Errored Second when there are more than N CRC anomalies in a period of time" used in claims 10 and 16 of the '337 patent means "a bit stream received over a period of time is declared to be severely errored if the amount of CRC anomalies over that period of time is greater than a specified number N," and the parties stipulate that based on the Court's claim construction 2Wire's Accused Products¹ do not satisfy at least one limitation of the Asserted Claims² of the '337 patent and, as such, 2Wire does not infringe the '337 patent as alleged by TQ Delta;

NOW THEREFORE, IT IS HEREBY STIPULATED, by and between the parties, as follows:

1. TQ Delta does not intend to proceed to trial on its infringement claims for the Asserted Claims of the Family 5 patents against 2Wire's Accused Products until after appeal, and if it is successful on appeal, and 2Wire does not intend to proceed to trial on its invalidity and non-infringement counterclaims.

2. With respect to the '337 and '379 patents, TQ Delta expressly reserves all of its rights following entry of a judgment, including the right to file an appeal (including, without limitation, with respect to the orders at D.I. 550 and D.I. 574) and to pursue its allegations of

¹ The Accused Products are 2Wire model numbers 5031NV, 5168N, 5168NV, and 5268AC.

² The Asserted Claims are claims 11 and 16 of the '379 patent, claims 10 and 16 of the '337 patent, claims 1 and 3 of the '778 patent, and claim 14 and 19 of the '958 patent.

infringement of the '337 and '379 patents in the event of reversal on appeal with respect to those patents, and 2Wire expressly reserves all of its rights following entry of a judgment, including the right to file a cross-appeal (including, without limitation, with respect to the orders at D.I. 550 and 574); and to challenge the validity of the '337 and '379 patents in the event of reversal on appeal on any and all grounds, including by asserting that there is a preclusive effect of the High Court's Approved Judgement finding that EP 1 792 430, which claims priority to the same original application as the '337 and '379 patents, is invalid.

3. For avoidance of doubt, this stipulation shall have no effect on any of the parties' claims and/or counterclaims as related to any other patents discussed in the operative Third Amended Complaint, D.I. 380, or in the operative Counterclaims, D.I. 505.

Dated: June 28, 2019

Respectfully submitted,

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